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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Administrative Appeals Office (AAO)
20 Massachusetts Ave., N.W., MS 2090
Washington, DC 20529-2090

U.S. Citizenship
and Immigration
Services

PUBLIC COPY

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[redacted]

FILE: [redacted] Office: CALIFORNIA SERVICE CENTER Date: JAN 19 2011

IN RE: Petitioner:
Beneficiary: [redacted]

PETITION: Petition for a Nonimmigrant Worker Pursuant to Section 101(a)(15)(L) of the Immigration and Nationality Act, 8 U.S.C. § 1101(a)(15)(L)

ON BEHALF OF PETITIONER:

[redacted]

INSTRUCTIONS:

Enclosed please find the decision of the Administrative Appeals Office in your case. All of the documents related to this matter have been returned to the office that originally decided your case. Please be advised that any further inquiry that you might have concerning your case must be made to that office.

Thank you,

Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The Director, California Service Center, denied the nonimmigrant petition and certified the decision to the Administrative Appeals Office (AAO) for review, in accordance with 8 C.F.R. §103.4(a)(5). The AAO will withdraw the director's decision and approve the petition.

The petitioner filed this nonimmigrant petition seeking to employ the beneficiary as an L-1A nonimmigrant intracompany transferee pursuant to section 101(a)(15)(L) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1101(a)(15)(L). The petitioner, a Michigan corporation, operates as an automotive parts supplier. It states that it is a subsidiary of [redacted] The petitioner seeks to employ the beneficiary in the position of president for a period of three years. The beneficiary was previously granted L-1A status in order to open a new office in the United States, and the petitioner's request to extend his status was denied in October 2009.

The petitioner then filed the current "new employment" petition on January 29, 2010. The director denied the petition on February 25, 2010, concluding that the petitioner failed to establish that the beneficiary would be employed in the United States in a primarily managerial or executive capacity. On November 17, 2010, the director issued a new decision denying the petition on the same grounds and certified the decision to the AAO.

In accordance with 8 C.F.R. §103.4(a)(2), the director notified the petitioner of the certification and provided an opportunity for the petitioner to submit a brief to the AAO within 30 days. Counsel for the petitioner submitted a brief and additional evidence to the AAO on December 15, 2010.

On certification, counsel claims that U.S. Citizenship and Immigration Services (USCIS) failed to follow its own policies with respect to extension petitions. Counsel asserts that the USCIS should have deferred to its prior determination that the position offered is in fact in a managerial or executive capacity. Counsel further asserts that the director's decision ignores the sizeable operations of the petitioner's Chinese parent company, mischaracterizes the nature of the roles performed by the beneficiary's subordinates, places undue emphasis on the size of the U.S. company, and is based, in part, upon irrelevant factors such as the size of the petitioner's office space and the beneficiary's salary relative to the petitioner's other employees. In further support of the petition, the petitioner submits a letter from the president of the petitioner's parent company, who seeks to clarify the nature of the beneficiary's proposed duties for the U.S. subsidiary and clarify discrepancies noted in the director's decision.

Upon review, the AAO agrees with counsel that the director's decision is based, in part, on errors of fact and flawed reasoning. The petitioner has met its burden to establish by a preponderance of the evidence that the beneficiary will be employed in a primarily managerial capacity. Accordingly, the AAO will withdraw the director's decision and approve the petition.

Although the petition will be approved, the AAO notes that this matter is not, as claimed by counsel, a request for an extension of the beneficiary's previously granted L-1A status. Furthermore, even if this were an extension petition, the director owed no deference to the previous finding that the beneficiary qualified for L-1A status to open a new office. *See* Memorandum of William R. Yates, Associate Director for Operations,

The Significance of a Prior CIS Approval of a Nonimmigrant Petition in the Context of a Subsequent Determination Regarding Eligibility of Petition Validity, 2 fn. 1 (April 23, 2004).

I. The Law

To establish eligibility for the L-1 nonimmigrant visa classification, the petitioner must meet the criteria outlined in section 101(a)(15)(L) of the Act. Specifically, a qualifying organization must have employed the beneficiary in a qualifying managerial or executive capacity, or in a specialized knowledge capacity, for one continuous year within three years preceding the beneficiary's application for admission into the United States. In addition, the beneficiary must seek to enter the United States temporarily to continue rendering his or her services to the same employer or a subsidiary or affiliate thereof in a managerial, executive, or specialized knowledge capacity.

The regulation at 8 C.F.R. § 214.2(l)(3) states that an individual petition filed on Form I-129 shall be accompanied by:

(i) Evidence that the petitioner and the organization which employed or will employ the alien are qualifying organizations as defined in paragraph (l)(1)(ii)(G) of this section.

(ii) Evidence that the alien will be employed in an executive, managerial, or specialized knowledge capacity, including a detailed description of the services to be performed.

(iii) Evidence that the alien has at least one continuous year of full-time employment abroad with a qualifying organization within the three years preceding the filing of the petition.

(iv) Evidence that the alien's prior year of employment abroad was in a position that was managerial, executive or involved specialized knowledge and that the alien's prior education, training, and employment qualifies him/her to perform the intended services in the United States; however, the work in the United States need not be the same work which the alien performed abroad.

Section 101(a)(44)(A) of the Act, 8 U.S.C. § 1101(a)(44)(A), defines the term "managerial capacity" as an assignment within an organization in which the employee primarily:

(i) manages the organization, or a department, subdivision, function, or component of the organization;

(ii) supervises and controls the work of other supervisory, professional, or managerial employees, or manages an essential function within the organization, or a department or subdivision of the organization;

(iii) if another employee or other employees are directly supervised, has the authority to hire and fire or recommend those as well as other personnel actions (such as promotion and leave authorization), or if no other employee is directly supervised, functions at a senior level within the organizational hierarchy or with respect to the function managed; and

(iv) exercises discretion over the day-to-day operations of the activity or function for which the employee has authority. A first-line supervisor is not considered to be acting in a managerial capacity merely by virtue of the supervisor's supervisory duties unless the employees supervised are professional.

Section 101(a)(44)(B) of the Act, 8 U.S.C. § 1101(a)(44)(B), defines the term "executive capacity" as an assignment within an organization in which the employee primarily:

(i) directs the management of the organization or a major component or function of the organization;

(ii) establishes the goals and policies of the organization, component, or function;

(iii) exercises wide latitude in discretionary decision-making; and

(iv) receives only general supervision or direction from higher level executives, the board of directors, or stockholders of the organization.

II. The Issue on Certification

The sole issue to be addressed in this certification proceeding is whether the petitioner established that the beneficiary will be employed in the United States in a primarily managerial or executive capacity.

The petitioner filed the Form I-129, Petition for a Nonimmigrant Worker, on January 29, 2010. The petitioner stated on the Form I-129 that it had five employees as of that date.

In a letter dated January 27, 2010, the petitioner described its U.S. operations and the activities of its corporate group. The petitioner is an indirect subsidiary of [redacted] which the petitioner describes as a Fortune 500 company and the [redacted] The petitioner stated that its direct parent company has ten manufacturing subsidiaries and 20 joint venture companies with foreign partners, with over $380 million in annual sales and 10,000 employees worldwide.

The petitioner indicated that the U.S. company was established in Michigan in 2008 "to develop and expand market shares for our various automotive products in North America, and to provide timely customer service and technical support to our customers." The petitioner indicated that after almost two years of operations it has "secured substantial business deals including import, export of automotive parts and components, technical and engineering service agreement, supplier agreements, etc."

The petitioner's initial letter included a lengthy list of the beneficiary's job duties separated into two parts. In a request for additional evidence ("RFE") dated February 4, 2010, the director instructed the petitioner to submit a more detailed description of the beneficiary's duties, advising the petitioner that it should indicate the percentage of time spent in each of the listed duties. The petitioner's response to the RFE included the same list of duties as the initial letter, with the requested percentages added to the latter section of duties. The job description submitted in response to the RFE was quoted in its entirety in the director's decision and will not be repeated here. Briefly, the petitioner indicated that the beneficiary's time would be allocated to formulating and overseeing business strategies; directing sales, distribution and supply management; managing marketing strategies; overseeing compliance with government rules and requirements applicable to the petitioner's business; overseeing resource allocation; directing human resources management; and reporting and interacting with the parent company.

The petitioner's initial supporting evidence included an organizational chart which shows that the beneficiary, as president, will supervise a financial manager, [redacted], and a sales manager, [redacted]. The chart indicates that [redacted], report to [redacted].

The petitioner also submitted evidence that it entered [redacted] to represent it in the sales of products fo[redacted] customers. Under the terms of the agreement, [redacted] is responsible to obtain quote opportunities, coordinate the quote process, answer customer's questions and requirements, attend customer's business and technical meetings, and follow up product shipments until the supply relationship with the customer is terminated. UThe agreement provides that [redacted] agents are to be paid by commission, in addition to a $1,000 monthly service fee. The AAO notes that the agreement appears to have been signed by [redacted], the [redacted] market sales representative, on behalf of [redacted] The petitioner also provided copies of business correspondence between the petitioner's customers, the petitioner and [redacted] which establish that [redacted] is actively involved in the quotation and sales process on behalf of the petitioning company.

In the RFE issued on February 4, 2010, the director requested, *inter alia*, the following: (1) detailed description of job duties, educational level, annual salaries/wages and immigration status for the five employees identified on the organizational chart; (2) the source of remuneration of all employees; (3) copies of the petitioner's State Quarterly Wage Reports for all employees for the last six quarters; (4) copies of the U.S. company's payroll summary, Forms W-2 and W-3, evidencing wages paid to employees for the years 2008 and 2009; and (5) a copy of the petitioner's corporate income tax returns, with all schedules and attachments, for the years 2008 and 2009. As noted above, the director also requested a more detailed description of the beneficiary's duties and the percentage of time he allocates to each duty.

The petitioner provided the requested position descriptions for the beneficiary's employees in a letter dated February 5, 2010. The petitioner noted that in addition to supervising the U.S.-based employees, the beneficiary will continue "giving directions to some of the managers" based at the Chinese parent company. The petitioner indicated that [redacted] serves as a material engineer with an annual salary of $74,000, holds an H-1B visa, and has a Master's degree in computer applications and a Bachelor's degree in Material Engineering. [redacted] serves as financing manager at an annual salary of $43,000, holds an L-1A visa, and has a Bachelor's degree in Economics. Finally, the petitioner indicated that the three sales managers, [redacted], are all U.S. citizens who work on commission with a monthly base salary of $1,000 to $2,000. The petitioner stated that [redacted] and [redacted] each hold Bachelor's degrees (in metal

stamping and mechanical engineering, respectively), and [redacted] has a Master's degree in Business Administration.

The petitioner submitted the requested state quarterly wage reports for all four quarters of 2009, along with its payroll journal report for January 2010. The January 2010 report reflects wages paid to all five employees, and indicates that the sales managers receive Form 1099 rather than an IRS Form W-2. The petitioner's 2009 IRS Form 1040, U.S. Corporation Income Tax Return, shows that the company paid $110,707 in compensation to officers, $5,500 in salaries and wages, $89,000 in outside services, and $56,588 in professional fees.

The director denied the petition on February 25, 2010, and subsequently issued a new decision on November 17, 2010, which was certified to the AAO. The director denied the petition on the sole grounds that the petitioner did not establish that the beneficiary will be employed in a primarily managerial or executive nature. The director noted that the petitioner appeared to be relying on partial sections of the regulations defining managerial capacity and executive capacity, and found that several of the beneficiary's proposed duties paraphrase elements of the regulatory definitions. The director determined that the petitioner "listed the duties as a conglomerate and left it up to USCIS to decide whether or not a duty was primarily managerial and/or executive in nature."

The director went on to discuss various discrepancies in the petitioner's submissions which she determined had not been addressed satisfactorily. The director noted that the petitioner had initially identified [redacted] as holding the position of sales manager; however, in response to the RFE, identified him as a materials engineer and provided a job description that did not appear to encompass the duties of a sales manager. The director noted that [redacted] had been granted a change of status to H-1B classification more than one month before the petition was filed, thus, it remained unclear what position he actually holds.

The director also found that the submitted evidence fails to establish any payments to the claimed sales managers. The director noted that the state quarterly reports for 2009 did not reflect any wages paid to these employees, although all three employees were named on the January 2010 payroll journal report. The director explained the perceived discrepancy as follows:

> According to the payroll's legend, however, the three sales managers are classified as receiving 1099s and no taxes appeared to be withheld for any of three persons. Furthermore, the bank account summary provided for January 2010 indicates that only $9,721.46 was debited under the description of "Fawer USA inc primepay payroll 1331214732 [redacted]." Yet the pay roll summary clearly shows that [redacted] earned $3,588 and [redacted] earned $6,235, which when combined, is equivalent to $9,823. Thus it does not appear that the U.S. entity actually paid the three sales managers the monthly base salaries indicated, which would have added an extra $4,000 to the amount debited (and/or did not pay [redacted] and [redacted] their professed wages). Lastly, the e-mail correspondence submitted indicates [redacted] and not [redacted] . . . . As such, USCIS is unclear as to who the three sales managers are actually working for or reporting to and how they are being remunerated.

The AAO notes that the director misread the petitioner's payroll journal and January 2010 bank statement. The payroll journal for the month of January 2010 indicates that [redacted] and [redacted]

were paid by direct deposit, in an amount totaling $9,721.46, which is precisely the amount reflected in the petitioner's bank records. The director appears to have relied upon the gross wages paid to [redacted] and [redacted] in calculating the expected payroll deposit amount. The payroll journal also clearly indicates that [redacted] and [redacted] were paid by company check, rather than by direct deposit.

The director further found that there was a discrepancy with respect to the beneficiary's employment dates as president of the U.S. company because it appeared that he signed a lease in that capacity two weeks before a job offer letter for the position was issued by the parent company on September 28, 2009. The director concluded that "it appears that the beneficiary was being employed for an unspecified period of time under the position title of president before the issue date of the appointment letter." The director also questioned why the beneficiary was paid the same wages as [redacted] during the second and third quarters of 2009, if he was in fact the president of the company and [redacted] is his subordinate.

The AAO notes that this entire line of inquiry is irrelevant to the matter at hand. The beneficiary was granted L-1A status for employment as the petitioner's president from September 2008 through September 2009. Therefore, the fact that he signed a lease in that capacity on September 14, 2009 does not create a discrepancy or raise questions regarding his actual job title. Further, the beneficiary's salary as paid during the validity period of a previous petition that has since expired is not determinative of his position within the company and provides insufficient basis for USCIS to question whether he was or is in fact the company's president. The instant petition is a new petition. The beneficiary has been offered the position of president at an annual salary of $85,000, which would make him the petitioner's highest paid employee. Nevertheless, the AAO finds no reason to doubt that the beneficiary previously held this position, regardless of what wages were paid to him during the company's first year of operation.

The director noted that based on the perceived inconsistencies and the petitioner's failure to provide the requested IRS Forms W-2, USCIS is "unable to determine which subordinate employees the beneficiary will be directing and/or supervising, what the claimed subordinate positions are in the organization, where the beneficiary's duties appear to be in the organizational hierarchy, or whether or not the U.S. entity has reached a level of organizational complexity such that the hiring/firing of personnel, discretionary decision-making and setting company goals and policies constitute significant components of the duties performed on a day-to-day basis."

The director further observed that, even if the discrepancies had been resolved, the record does not establish that the beneficiary's proposed position is primarily executive or managerial. The director, in addressing the petitioner's "minimal staffing level," noted that in a company with a president, four managers and an engineer, the president would "by necessity perform the operational duties of the U.S. organization." The director acknowledged that the petitioner's reasonable needs and stage of development must be considered pursuant to section 101(a)(44)(C) of the Act, but found that, here, the petitioner "has not explained how the reasonable needs of the petitioning enterprise justify the beneficiary's performance of non-managerial or non-executive duties."

In reaching this conclusion, the director emphasized that the petitioner's 2008 audited financial statements identify the company as "a development stage company." In addition, the director noted that the petitioner's updated lease documents appear to show that the petitioner is in possession of only 468 square feet of office space. The director concluded that "in light of the small working space, it is not unreasonable to assume that

the petitioning organization is not in a stage of development, having a relatively small working space, to reasonably require the beneficiary's job duties."

The AAO notes that neither the petitioner's 2008 financial statements nor the petitioner's "apparent" office space provide an adequate basis for drawing any conclusions regarding the beneficiary's employment capacity. Regardless, the AAO notes that the petitioning company was established during 2008 and therefore was reasonably characterized by its accountants as a "development stage company" during that fiscal year. Furthermore, the petitioner's lease executed in September 2009 clearly indicates that the company has rented 2,499 square feet of office space. It is unclear how the director derived the lesser figure of 468 square feet.

The director went on to question whether the beneficiary's claimed subordinate employees are employed in a professional capacity. The director noted that, after consulting the U.S. Department of Labor's 2009-2010 *Occupational Outlook Handbook*, it is evident that neither a sales manager nor a financial manager requires a bachelor's degree. The director further found that none of the alleged managerial positions appear to have any subordinate employees, such that they could be classified as managers or supervisors. The director acknowledged that the position of material engineer is a professional position, but found that the evidence as a whole does not establish that the beneficiary would primarily supervise a subordinate staff comprised of managerial, supervisory or professional positions. The director concluded that the beneficiary would more likely than not be acting as a first-line supervisor of non-professional employees, rather than as a manager or executive.

Counsel's brief on certification addresses various factual and legal errors on the part of the director, several of which have been addressed above. Counsel alleges that the director ignored the sizeable operations of the petitioner's parent company, noting that "the beneficiary's position as highest authority of that company's arm in the United States necessarily implies the abundance of high level managerial work for him to perform in his capacity as a key manager in coordinating the operation of the Chinese and US offices." Counsel further argues that the director ignored the fact that the beneficiary would continue to supervise employees in China.

In addition, counsel contends that the director erred by placing undue emphasis on the small size of the petitioning company, relying on *National Hand Tool Corp. v. Pasquarell*, 889 F.2d, n.5 (5th Cir. 1989) and *Mars Jewelers, Inc. v. INS*, 702 F. Supp. 1570, 1573 (N.D. Ga. 1988) to stand for the proposition that the statute does not limit managers or executives to persons who supervise a large number of persons or large enterprises.

Counsel further argues that the petitioner, given the nature of its business, has a reasonable need for a managerial or executive position. Counsel emphasizes that the petitioner is a subsidiary of the largest company in the Chinese automotive industry, and as such will play an important role in cooperation and development between the U.S. and Chinese auto industries.

Finally, counsel contends that the director's decision "ignores the fact that the case at hand is an extension petition." On appeal, counsel cites to an April 23, 2004 agency memorandum from William R. Yates, which states that in matters related to an extension of nonimmigrant petition validity involving the same parties and

the same underlying facts, deference should be given to an adjudicator's prior determination of eligibility.[1] Counsel asserts that the director erred by failing to adhere to the guidance provided in the Yates memorandum, noting that it is not clear why USCIS "is calling into serious doubt its own previous approval of the petitioner's merits."

In support of the petition, the petitioner has submitted a letter dated December 14, 2010 from the president of the petitioner's parent company, who further addresses the beneficiary's job duties, providing several examples of specific actions the beneficiary has taken as president. He notes that the U.S. company has been challenged by the economic recession and the effects on the U.S. auto industry, and that such challenges have required the presence of an experienced manager to control risks and to alter business plans and strategies according to market conditions.

III. Conclusion

Upon review of the totality of the record, the petitioner has established that the beneficiary will be employed in a managerial capacity.

The statutory definition of "managerial capacity" allows for both "personnel managers" and "function managers." *See* section 101(a)(44)(A)(i) and (ii) of the Act, 8 U.S.C. § 1101(a)(44)(A)(i) and (ii). Personnel managers are required to primarily supervise and control the work of other supervisory, professional, or managerial employees. Contrary to the common understanding of the word "manager," the statute plainly states that a "first line supervisor is not considered to be acting in a managerial capacity merely by virtue of the supervisor's supervisory duties unless the employees supervised are professional." Section 101(a)(44)(A)(iv) of the Act; 8 C.F.R. § 214.2(l)(1)(ii)(B)(*2*). If a beneficiary directly supervises other employees, the beneficiary must also have the authority to hire and fire those employees, or recommend those actions, and take other personnel actions. 8 C.F.R. § 214.2(l)(1)(ii)(B)(*3*).

The record establishes that the petitioning company, as of the date of filing, was staffed by a total of five employees, all of whom possess at least a Bachelor's degree. All of these employees would report directly or indirectly to the beneficiary. Although the director determined that only one of the positions subordinate to the beneficiary would require an individual with a Bachelor's degree, the AAO disagrees.[2] The petitioner has

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[1] Memorandum of William R. Yates, Associate Director for Operations, *The Significance of a Prior CIS Approval of a Nonimmigrant Petition in the Context of a Subsequent Determination Regarding Eligibility of Petition Validity* (April 23, 2004).

[2] In evaluating whether the beneficiary manages professional employees, the AAO must evaluate whether the subordinate positions require a baccalaureate degree as a minimum for entry into the field of endeavor. Section 101(a)(32) of the Act, 8 U.S.C. § 1101(a)(32), states that "[t]he term *profession* shall include but not be limited to architects, engineers, lawyers, physicians, surgeons, and teachers in elementary or secondary schools, colleges, academies, or seminaries." The term "profession" contemplates knowledge or learning, not merely skill, of an advanced type in a given field gained by a prolonged course of specialized instruction and study of at least baccalaureate level, which is a realistic prerequisite to entry into the particular field of endeavor. *Matter of Sea*, 19 I&N Dec. 817 (Comm. 1988); *Matter of Ling*, 13 I&N Dec. 35 (R.C. 1968); *Matter of Shin*, 11 I&N Dec. 686 (D.D. 1966).

provided copies of business correspondence between the petitioner's commissioned sales managers, its material engineer, and its auto industry customers. The record indicates that the petitioner is not merely selling a standard, stock product but rather is working with automobile company engineering staff and the petitioning group's engineering staff in order to custom design and manufacture parts for use in commercial and passenger cars sold by U.S. automakers. The documents exchanged during the quotation process are detailed engineering and manufacturing design documents. As established by the evidence, the process requires the petitioner's staff to meet with the U.S. customers' staff to discuss product specifications and would reasonably require the services of individuals who have engineering or related degrees themselves. Given the nature of the work, the AAO finds sufficient evidence in the record to support a finding that at least a majority of the U.S. company's existing staff is comprised of professionals. The AAO is also satisfied that the beneficiary would have the authority to hire and fire employees and take other personnel actions with respect to the staffing of the United States office.

The petitioner has also met its burden to establish that the beneficiary "manages the organization, or a department, subdivision, function, or component of the organization," as required by section 101(a)(44)(A)(i) of the Act. The beneficiary would be the highest-ranked employee in the petitioner's U.S. company, which is itself a subsidiary with close ties to its foreign parent company and part of a Fortune 500 multinational organization. The petitioner has also clarified that the U.S. subsidiary was established with a $1.3 million investment as a key component of the multinational organization charged with increasing the parent company's visibility in the North American market.

Finally, the petitioner must establish that the beneficiary exercises discretion over the day-to-day operations of the activity or function for which he has authority, as required by section 101(a)(44)(A)(iv) of the Act. USCIS reviews the totality of the record when examining the claimed managerial or executive capacity of a beneficiary, including the petitioner's organizational structure, the duties of the beneficiary's subordinate employees, the presence of other employees to relieve the beneficiary from performing operational duties, the nature of the petitioner's business, and any other factors that will contribute to a complete understanding of a beneficiary's actual duties and role in a business. The petitioner has satisfied this element of the definition.

As required by section 101(a)(44)(C) of the Act, if staffing levels are used as a factor in determining whether an individual is acting in a managerial or executive capacity, USCIS must take into account the reasonable needs of the organization, in light of the overall purpose and stage of development of the organization. However, the reasonable needs of the petitioner will not supersede the requirement that the beneficiary be "primarily" employed in a managerial or executive capacity as required by the statute. *See* sections 101(a)(44)(A) and (B) of the Act, 8 U.S.C. § 1101(a)(44). The reasonable needs of the petitioner may justify a beneficiary who allocates 51 percent of his duties to managerial or executive tasks as opposed to 90 percent, but those needs will not excuse a beneficiary who spends the majority of his or her time on non-qualifying duties.

Here, the director concluded that the beneficiary must be engaged in the operational tasks of the company due to the fact that it employs only five other employees. The director's decision does not indicate which

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Therefore, the AAO must focus on the level of education required by the position, rather than the degree held by subordinate employee. The possession of a bachelor's degree by a subordinate employee does not automatically lead to the conclusion that an employee is employed in a professional capacity as that term is defined above.

operational tasks the director believes the beneficiary would engage, nor does it appear to take into account the reasonable needs of the organization. The documentary evidence demonstrates that the beneficiary is not directly involved in the day-to-day routine details of obtaining customer specifications, preparing quotes or other non-qualifying tasks related to the petitioner's primary business activities. Rather, the evidence shows that the sales managers directly interact with customers and potential customers with guidance and input from the material engineer, who in turn reports to the beneficiary. The evidence also establishes that the petitioner works closely with other companies within its corporate group during the quotation, sales and manufacturing process and has resources beyond the staff of the U.S. office. While the record shows that the petitioner has been consistently doing business over the last year, and has grown from two to five employees, the scope of the U.S. operation is not large and we are satisfied that the current staff is sufficient to relieve the beneficiary from primarily performing non-managerial tasks. The petitioner's parent company has explained its reasonable need to place a *bona fide* manager in charge of the U.S. company to oversee its 1.3 million investment in the U.S. market and to manage risks and alter business plans as necessary in light of the economic recession and its impact on the U.S. auto industry. Overall, the evidence presented is sufficient to establish that the beneficiary would reasonably need to devote at least 51% of his time to the claimed managerial duties.

Based on the foregoing, the petitioner has established that the beneficiary would be employed in a primarily managerial capacity. Accordingly, the appeal will be sustained.

Finally, although the petition will be approved, we note that this matter is not, as claimed by counsel, a request for an extension of the beneficiary's previously granted L-1A status. Pursuant to 8 C.F.R. § 214.2(l)(14)(i), an extension petition may be filed only if the validity of the original petition has not expired. Here, the petitioner filed its request for an extension of the beneficiary's L-1A status before the initial petition expired and the extension request was denied in October 2009. The instant petition was filed well after the initial new office petition expired and is therefore adjudicated as a new petition, pursuant to 8 C.F.R. § 214.2(l)(3), rather than as an extension of the beneficiary's initial petition, pursuant to 8 C.F.R. § 214.2(l)(14)(ii).

Furthermore, even if this were an extension petition, the director owed no deference to the previous finding that the beneficiary qualified for L-1A status to open a new office. The one-year "new office" provision is an accommodation for newly established enterprises, provided for by USCIS regulation, that allows for a more lenient treatment of managers or executives that are entering the United States to open a new office. The Yates memorandum specifically states, at page 2, fn.1, that it does not apply to L-1 new office extension petitions.

In visa petition proceedings, the burden of proving eligibility for the benefit sought remains entirely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. Here, the petitioner has sustained that burden. For the foregoing reasons the decision of the director will be withdrawn and the petition will be approved.

ORDER: The decision of the director is withdrawn. The petition is approved.